IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION NO: 7060 of 2000

Between:

K. Rama Koti s/o K.Chennappa, r/o Cherlopalle village,
Owk Mandal, Kurnool District.

... PETITIONER

AND

1. The Chief Engineer (Electricity) A.P. Transco, Cuddapah.

2. The Superintending Engineer (Assessments), A.P. Transco, Cuddapah.

3. The Assistant Divisional Engineer (Operations) A.P. Transco,
Bangannaplle, Kurnool District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ Mandamus declaring the order of the first respondent issued in Proceedings vide Lr.No.CE/CZ/CDP/C&P/221/A.193-99-KNL/D.No.830/2000 dated 18-02-2000 confirming the order of the second respondent vide proceedings No.SE/A/CDP/FAO/D.NDL/PE36/97-98/D.No.185/98 dated 23-06-1998 including the demands issued towards assessment as illegal arbitrary and violative of Articles 14 and 21 of the Constitution of India and consequently direct the respondents to forbear from enforcing the said demand and set aside the same.

Counsel for the Petitioner: MR. C. V. NAGARJUNA REDDY

Counsel for the Respondents: SMT. M. VINOBHA DEVI

The Court made the following:

ORDER:

The petitioner, who is running a Small Scale Stone Polishing Unit files this writ petition *inter alia* seeking to assail the impugned proceedings dated 18-02-2000 of the first respondent confirming the impugned orders of the second respondent dated 23-06-1998 in regard to the assessment made on certain allegations found against the petitioner during the inspection.

2. The case of the petitioner is that on 23-12-1997, an inspection was made, wherein it was found that:

> "All three fuse carriers of load cut outs found removed and kept aside. Three numbers external special wires found hooked to the out going terminals of the load cut outs and the other ends of these wires hooked to the L.T. fuse units terminals of distribution transformer located just behind the factory shed wall".

On the allegations, the provisional assessment was made and after considering the explanation of the petitioner, final assessment was made at Rs.7,40,432/-. On appeal, the same was reduced to Rs.3,33,596/-. Having regard to the nature of business, the question of pilferage does not arise, nor there would be any such assessment as calculated by the respondents. Hence, on both the grounds, the writ petition is liable to be allowed.

3. Learned standing Counsel appearing for the respondents supported the impugned orders and further contended that having regard to the findings arrived at in the impugned orders, it is not open to the petitioner to raise all the questions once again.

4. Considering the submissions made and also on perusal of the impugned order, the question that arises for consideration is as to whether on the facts and circumstances of the case, the petitioner can be held liable for the allegations made against him, as found during the inspection by the respondents.

5. There is no dispute to the fact that the inspection was held on

23-12-1997 wherein the aforesaid allegation was made and on which the proceedings have been initiated. The case of the petitioner is of total denial and also having regard to the nature of the business, such exemption could not have been done, and therefore, ultimately assessment can therefore be said to be on the higher side. However, it is to be seen that both the parties did not find favourable reasons as shown in regard to the main allegations of charge and ultimately held that it is the petitioner, who is responsible for the same. Since the said finding is that of a fact, this Court would not venture to go into or re-appreciate the same under Article 226 of the Constitution of India. However, in regard to the quantum of assessment is concerned, though the primary authority has made final assessment at Rs.7,40,332/-, the same was drastically reduced to Rs.3,33,596/-. By taking into consideration the fact that the inspection was made as long as on 23-12-1997 and also the facts and circumstances of the case and the nature of business, it would suffice in the interests of justice to revise the same to an appropriate assessment.

6. In the circumstances, the amount of Rs.3,33,596/- stands reduced to 10%. After such reduction, the amount comes to Rs.3,00,237/-.

7. The writ petition is accordingly allowed in part. No costs.

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B. PRAKASH RAO, J

Dt.30-12-2004

Glv/Chvn

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Thursday the Thirtieth day of December,2004.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

Copy to:

1. The Chief Engineer (Electricity) A.P. Transco, Cuddapah.

2. The Superintending Engineer (Assessments), A.P. Transco, Cuddapah.

3. The Assistant Divisional Engineer (Operations) A.P. Transco,
Bangannaplle, Kurnool District.

4. Two C.D copies.